
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

GARY ORTEGA,

Plaintiff,

v.

LASIK VISION INSTITUTE, LLC,

Defendant.

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DENYING
MOTION FOR REINSTATEMENT

Case No. 2:18-cv-00982-JNP-DAO

District Judge Jill N. Parrish

Plaintiff Gary Ortega sued Lasik Vision Institute, LLC, CareCredit, LLC, and Synchrony Bank. He asserted that this court had diversity jurisdiction to preside over this action. CareCredit and Synchrony bank moved to dismiss, arguing that Ortega had not alleged facts showing that they were diverse parties. ECF No. 12. Magistrate Judge Furse issued a Report and Recommendation that the motion to dismiss be granted because the complaint had not adequately alleged facts showing that this court had subject matter jurisdiction to hear this case. ECF No. 23. The Report and Recommendation noted that the complaint did not assert a discernable federal cause of action and found that publicly available records showed that Synchrony Bank was a citizen of Utah, the state of Ortega's citizenship. Accordingly, the Report and Recommendation concluded that this court had neither federal question nor diversity jurisdiction to hear this case. In response to the Report and Recommendation, Ortega moved to dismiss CareCredit and Synchrony Bank. The court granted the motion, mooted the motion to dismiss.

Ortega subsequently moved to reinstate Synchrony Bank as a defendant in this case. ECF No. 43. Magistrate Judge Oberg issued a Report and Recommendation that the court deny Ortega's motion as futile because reinstating Synchrony Bank would destroy diversity jurisdiction. ECF

No. 51. Ortega objected to the Report and Recommendation. Notably, he did not argue that Synchrony Bank is a diverse party. Instead, he argues that the court has the power to “convert this case to a Federal question Qui Tam lawsuit [sic].” But the court may not sua sponte amend the claims in this action absent a motion. Nor has Ortega explained how he has a valid qui tam claim or attempted to justify an amendment almost six years after initiating this lawsuit. Accordingly, the court **OVERRULES** Ortega’s objection and **ADOPTS** Judge Oberg’s Report and Recommendation. The court **DENIES** Ortega’s motion to reinstate Synchrony Bank as a defendant in this action.

DATED December 6, 2024.

BY THE COURT



Jill N. Parrish
United States District Court Judge